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Chairperson: Mr. Penke ..... (Latvia)

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The meeting was called to order at 10.05 a.m.

Agenda item 69: Promotion and protection of human rights (A/64/81)

(a) Implementation of human rights instruments (A/64/40 (vols. I and II),[1] A/64/44, A/64/48, A/64/128 and Corr.1, A/64/212, A/64/215 and Corr.1, A/64/264, A/64/276, A/64/306 and Corr.1)

1. **Ms. Neuwirth** (Director, New York Office of the High Commissioner for Human Rights) introduced five reports under the agenda item. The report of the Secretary-General on the Status of the United Nations Voluntary Fund on Contemporary Forms of Slavery (A/64/306 and Corr.1) provided figures in paragraphs 14 and 15 for the project grants recommended by the Board of Trustees of the Fund, and in paragraph 21 referred to the progress made in implementing the recommendations of the Office of Internal Oversight Services (OIOS).

2. In the report of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (A/64/264), OIOS had welcomed the considerable improvements made to the administration of the Fund since its 2004 evaluation, and considered that only recommendation 9 (strengthened management system) had not yet been fully implemented. That would be done by December 2009.

3. The report of the United Nations High Commissioner for Human Rights on equitable geographical distribution in the membership of the human rights treaty bodies (A/64/212) also considered the procedures for the election of members and their gender distribution. The recommendations of the chairpersons of the treaty bodies were contained in document A/64/276, and the High Commissioner recommended that States parties, when nominating and electing members of the treaty bodies, should be governed by the provisions set out in each treaty or in Economic and Social Council resolution 1985/17. The High Commissioner also recommended that her report should be forwarded to the chairpersons of the meetings or conferences of States parties and to the Economic and Social Council.

4. The annual report of the Human Rights Committee (A/64/40, vols. I and II) indicated that the Committee had adopted 46 Views on communications, declared 6 communications admissible and 29 inadmissible, and had discontinued consideration of 13 communications. By the end of the ninety-sixth session, 410 communications were still pending.

5. The report of the chairpersons of human rights treaty bodies on their twenty-first meeting (in document A/64/276) assessed the progress made in the cooperation among treaty bodies and considered harmonization of treaty body working methods and the universal periodic review mechanism of the Human Rights Council. It was decided that the tenth inter-committee meeting would be devoted to discussion of the follow-up to concluding observations and Views of treaty bodies, in order, inter alia, to identify best practices in respect of follow-up and consider possible areas of harmonization, and would include the universal periodic review mechanism of the Human Rights Council as a standing agenda item. The chairpersons had met with the President of the Human Rights Council, held meetings with the special procedures mandate holders and with the independent expert on minority issues, and held a consultation meeting attended by approximately 50 States parties. The various decisions and recommendations set out in paragraph 17 of the report addressed issues relating to endorsement of the points of agreement at the inter-committee meetings, interaction with the special procedures mandate holders and the Human Rights Council, and the allocation of human and financial resources.

6. **Mr. Grossman** (Chairperson, Committee against Torture) recalled that his Committee's mandate extended to the functions established in articles 19 and 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He reviewed the work of the Committee as described in its annual report (A/64/44), referred to the difficulties that arose when States parties did not cooperate, and stressed that the Committee could not receive complaints relating to a State party which had not recognized the Committee's competence under article 22.

7. He drew attention to the obligations under articles 3, 7, 10 and 12 to 14 of the Convention, especially the obligation to prevent acts of torture and ill-treatment, underscored in the Committee's general comment No. 2 (CAT/C/GC/2).

[1] To be issued.

8. Among the difficulties and challenges was the fact that, despite the progress made in standardizing the law, the practice of torture had not abated. Very often, States did not adopt laws prohibiting torture, did not prosecute or convict the perpetrators of acts of torture and did not respect the principle of non-refoulement. In quite a few countries, the conditions of detention were still unsatisfactory, forced disappearances continued and the victims of torture still were not entitled to claim compensation.

9. Given that troubling situation, the Committee was seeking to help countries to meet their obligations. Accordingly, in 2002 and 2003 it had adopted procedures for following up on its views on communications and its concluding observations on periodic reports, and had in 2007 amended the procedures for the submission of reports to allow for more exchanges with the States parties. Those innovations, however, had increased the Committee's burden, compounding the already heavy pace of the work being done by its reduced membership. The Committee had therefore requested the General Assembly to provide appropriate financial support to enable it to hold additional sessions so that it could perform its mandate. In addition, the Committee intended to adopt two new general comments: one on the significance of the matters with which it dealt, and the other on article 14 of the Convention.

10. **Mr. Tagle** (Chile) informed the Committee that in September 2009 a Headquarters agreement had been concluded establishing a regional office of the High Commissioner for Human Rights in Santiago. Chile had submitted its initial report to the Committee against Torture a few months earlier and had taken note of the Committee's recommendations. It had also received a delegation from the Association for the Prevention of Torture, which had offered suggestions and advice regarding the establishment of a national mechanism for the prevention of torture.

11. **Ms. Zhang** Dan (China) said that China had fulfilled its obligations under the Convention against Torture and had submitted five reports to that treaty body. Her delegation therefore considered it unfortunate that in November 2008 certain members of the Committee against Torture had deliberately politicized the examination of China's periodic report, ignored the detailed information provided by her Government and made unfounded accusations in their concluding observations. China hoped that in the future the Committee would show fairness and objectivity in carrying out its mandate, and it was prepared to continue working with it in an atmosphere of mutual respect.

12. **Ms. Gendi** (Egypt), expressing surprise that the question of torture in the course of armed conflicts and in Territories under foreign occupation had not been addressed in the Committee's report, asked for information on the subject. Also, her delegation would like to know whether the Committee against Torture and the Committee on the Rights of the Child were working together on the question of children in detention.

13. **Ms. Schlyter** (Sweden), speaking on behalf of the European Union, asked for more details on the Committee's methods of work, and whether there was any discernible trend in the cooperation it was receiving from States parties in the submission of reports. It would also be interesting to know if the Committee had plans for closer cooperation with the Human Rights Council, in the context, for example, of the universal periodic review mechanism, or with other United Nations bodies in the field. Lastly, it wondered if the relevant resolutions adopted by the General Assembly and the Human Rights Council were useful to the work of the Committee.

14. **Ms. Kidanu** (Ethiopia) asked how the Committee would be helping States parties to familiarize themselves with the guidelines and procedures for the submission of reports.

15. **Mr. Grossman** (Chairperson, Committee against Torture) thanked the representative of Chile for his statement. He assured the Chinese delegation that he would convey its concerns to the members of the Committee and welcomed China's plan to continue cooperating with it. In reply to Egypt's question, he recalled that in general comment No. 2 on the implementation of article 2 by States parties (CAT/C/GC/2) the Committee had emphasized that no exceptional circumstances whatsoever — whether resulting from natural catastrophes or human activities — could be invoked to justify derogating from the obligations imposed by the Convention. It was precisely in emergencies that torture was resorted to most frequently, and they therefore required greater vigilance. The Committee's position had always been clear and consistent on that point.

16. In reply to the representative of Sweden, he said that States parties often sent high-level delegations to interact with the Committee, including representatives of the prison system and of the police, thus giving the Committee a good conception of the position of the State. Civil society also played an important role. Basically, the Committee welcomed the progress made in ratifying the Optional Protocol to the Convention. The cases of extrajudicial rendition were declining, while a growing number of States parties had incorporated the provisions of article 1 of the Convention in their national legislation and submitted communications pursuant to article 22. More needed to be done, however, if the Convention was to be implemented in its entirety by all States parties, especially as regarded reparation.

17. The universal periodic review mechanism furnished the Committee with very interesting supplementary information, as it did in the case of the other treaty bodies. Even though some consideration had to be given to how resources were to be allocated to the treaty bodies and to the universal periodic review mechanism, the fact remained that the Committee wished to work more closely with the mechanism and ensure that it had all the support it needed. The Committee did take into account the resolutions adopted by Member States in the General Assembly and the Human Rights Council, to the extent that they were applicable to its mandate.

18. Replying to the representative of Ethiopia, he said that the Committee gave guidance to States parties in the preparation of their reports in order to facilitate dialogue. He knew that it was difficult for some States to prepare the many reports that were required of them and that they had to be given the resources and training needed for the purpose. The various United Nations assistance and cooperation mechanisms had an important part to play in that regard.

19. **Mr. Rodríguez-Rescia** (Chairperson, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) said that Switzerland had been the fiftieth State to ratify the Optional Protocol to the Convention, which had expanded the membership of the Subcommittee from 10 to 25 members. Basically, the Subcommittee carried out its mandate by making visits to places of deprivation of liberty and then making its recommendations, and by establishing contact with the national preventive mechanisms that States parties were obligated to establish or designate and providing advice and assistance to them. It also cooperated with other international bodies at the global and regional levels working in the area of human rights, such as the African Commission of Human and Peoples' Rights and the International Committee of the Red Cross.

20. The Subcommittee had made seven visits to States parties since 2007. Most of the reports on those visits were confidential, but several general recommendations could be drawn from those that had been made public, namely, the reports on Sweden and Maldives, which could be consulted on the website of the High Commissioner for Human Rights. The recommendations concerned in particular the establishment, mandate and membership of national preventive mechanisms, the harmonization of national legislation with international norms, the reinforcement of the competent institutions and the role of the police and the prison system. Depending on the country, the situation of vulnerable groups like women, disabled persons and indigenous peoples could call for special attention. He urged the States parties which had not yet done so — and that was approximately half of them — to establish or designate a national mechanism for the prevention of torture. The national mechanisms, when they were well conceived, were a key element in the system of prevention instituted by the Optional Protocol. The Subcommittee had developed preliminary guidelines for the establishment of such mechanisms and was working on developing analytical tools to assess how they were functioning. It had also put the finishing touches on working methods and rules aimed at rationalizing its activities and making the most of the limited resources at its disposal.

21. For lack of means, the Subcommittee could make only three or four visits per year, even though effective preventive action required at least eight. It should also be noted that the Subcommittee's work with national preventive mechanisms was financed exclusively by the civil society organizations that comprised the Optional Protocol Contact Group. He asked the General Assembly to provide the Subcommittee with the resources needed to hold sessions with 15 additional members and to make field visits as often as possible. The Special Fund provided for in article 26 of the Optional Protocol did not finance the Subcommittee's work but rather was intended to be used to implement the Subcommittee's recommendations.

To date, the Special Fund had received contributions from Spain and Maldives.

22. **Mr. De Léon Huerta** (Mexico) said that his Government was currently studying the report the Subcommittee made after its 2008 visit to Mexico with a view to carrying out its recommendations. Mexico had a national preventive mechanism that had since 2008 been visiting the country's detention centres. That had led to the creation of five units responsible for monitoring the situation of detainees and preventing ill-treatment and torture in places of detention and internment. It would be interesting to know how the Subcommittee intended to reorganize its work so that it would remain effective with 15 additional members.

23. **Ms. Schlyter** (Sweden), speaking on behalf of the European Union, asked for details of how the Subcommittee was helping countries to set up national preventive mechanisms, which the European Union considered very important. She asked also if its budgetary needs differed from those of the other treaty bodies, and if it had some points in common with them. It would be interesting to know whether the Subcommittee had drawn some lessons from its field visits and, although obviously its reports were intended primarily for the countries in question, whether they could be of benefit to other countries. In addition, more information would be useful on how the Subcommittee was cooperating with other bodies in the field, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

24. **Mr. Vigny** (Switzerland) said that Switzerland endorsed the request that the Subcommittee should be provided with sufficient resources to make at least eight visits per year to States parties to the Optional Protocol. He asked what the Subcommittee planned to do to encourage the international community, and especially Member States, to make voluntary contributions to the Special Fund established by the Optional Protocol to help States parties implement the Subcommittee's recommendations.

25. **Mr. González** (Costa Rica) commended the Subcommittee for its work and said that, like Switzerland, his Government believed it should be given the resources to carry out at least eight country visits per year. His delegation asked how the Subcommittee would plan its work with 15 additional members and closely monitor the establishment of national preventive mechanisms with the inadequate budget at its disposal.

26. **Mr. Şen** (Turkey) said that his Government, which had a zero-tolerance policy on torture and ill-treatment, had ratified the Convention in 1988, had started the process of ratifying the Optional Protocol and had been a party to the European Convention for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment since 1999.

27. **Ms. Doláková** (Czech Republic) concurred that if the Subcommittee was to act effectively to prevent torture, it must be given the necessary resources to make regular country visits, observing that the current average of three visits per year was not enough.

28. **Mr. Tagle** (Chile) said that his delegation as well believed that, in view of the importance of its work, the Subcommittee should be given resources commensurate with its increased membership, and suggested that if it maintained flexible relations with regional organizations through seminars or other activities, that would help it to deal with some of the practical difficulties in the field.

29. **Mr. Rodríguez-Rescia** (Chairperson, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), responding to the questions raised, said that unlike the other treaty bodies, the Subcommittee's mandate was not to consider reports on the situation in the countries, nor to propose measures to be taken, but to visit the countries to examine the structural problems; therefore, if it could not make enough visits, it would not be able to make useful recommendations. The expansion of the Subcommittee from 10 to 25 members was provided for in the Optional Protocol; with 15 more members, it was logical that it should make more visits. Within the limits of its available resources, the Subcommittee aimed to make as many visits as possible by setting up teams based on the size of the country's prison population, working in a transparent and rational way and planning its programme of visits as well as possible.

30. The Subcommittee received many requests for assistance from countries but did not have enough resources to comply with each request. To help establish national preventive mechanisms, it organized or participated in national and regional seminars, drew up guidelines and drew the countries' attention to shortcomings in their existing mechanisms. It believed

that it was for the countries to decide on the kind of mechanism they wanted and that sometimes it was enough for them to reinforce an existing body and allocate sufficient resources to it, the essential being to satisfy the recommended criteria.

31. Created by virtue of a new-generation instrument that relied on a dialogue with the States parties, the Subcommittee was not called upon to make reports, monitor situations or denounce violations, but to work collaboratively with the States. In order not to encroach upon the activities of the Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, it coordinated with them; it set up its schedule of visits on the basis of other factors, analysing what programmes the countries had put in place to protect human rights and cooperating with regional organizations like the African, European and Inter-American human rights commissions.

32. The Subcommittee was learning a great deal from its country visits, most importantly how to build a constructive dialogue with the countries in order to be able to assess the situation, identify the dangers and make recommendations. Being empowered to go to countries without having to get their consent, the Subcommittee sought to establish dialogue quickly with the countries concerned by informing them of its intention to visit.

33. The Subcommittee cooperated as much as possible with bodies outside the United Nations system, like the Association for the Prevention of Torture or regional bodies like the European Committee for the Prevention of Torture, with which it had scheduled a meeting to study how the national preventive mechanisms in Europe could be reinforced.

34. Because the Special Fund available to it usually showed a deficit, the Subcommittee hoped that States would contribute to it as they began to see the results of its work. The Subcommittee would like to make its country reports more widely available because recommendations made confidentially to one country could be useful to others, but it could do so only with the consent of the States concerned. It planned to devise a strategy to encourage voluntary contributions to the Special Fund, which was used only to help finance the implementation by States of the recommendations.

35. As to follow-up, the Subcommittee, after each visit, prepared a report in which it made recommendations; the State in question was expected to follow up on them.

36. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), reviewing the main points in his report (A/64/215), made a general assessment of his country visits, underscoring the ill-treatment endured by many detainees, including children, and the inhumane conditions of detention that he had been able to observe. There was, furthermore, inter-prisoner violence and, in many countries, widespread corruption among those in charge of administering justice.

37. Whereas many thought that torture was primarily the fate of political and other "high-ranking" prisoners, most victims belonged to the poorest and most disadvantaged sectors of society. Arbitrarily detained persons were deprived of most of their rights, a situation that amounted to a systematic denial of human dignity and that must therefore be qualified as inhuman and degrading treatment.

38. Recalling the three categories of basic rights described in his report, namely the rights which detainees had forfeited as a result of their lawful deprivation of liberty, relative rights that might be restricted for justified reasons, and absolute rights, he said that, in order to live up to their international obligations to protect those rights, States should undertake comprehensive criminal justice reforms. They should also provide more resources to the administration of justice system with a view to empowering detainees so that they were able to challenge the legality of their situation. In addition, States should ensure that there was a truly independent judiciary and create independent national monitoring mechanisms, including by ratifying the Optional Protocol to the Convention against Torture, which required the establishment of such mechanisms. The international donor community should, as a matter of priority, assist poorer States in their efforts to reform their judicial and penitentiary systems. The time had come to draft and adopt a special United Nations convention on the rights of detainees, given that they were among the most vulnerable groups, like children and persons with disabilities, whose rights had been the subject of specific conventions.

39. As for the approximately one million child detainees, he noted that in many countries the juvenile justice system, if it existed at all, was well below human rights standards. In many countries the criminal justice system functioned as a substitute for a missing or dysfunctional welfare system, resulting in the detention of children, such as street children, who had not committed a crime but required welfare assistance. He was alarmed by the very low age of criminal liability in many countries and recalled that, under international standards, the State was required to protect detainees, especially the most vulnerable among them, such as children, against abuse by their fellow detainees. Without that protection, child detainees found themselves at the bottom of the internal pecking order, prone to all forms of exploitation. He called on all States to put the best interests of the child at the centre of their juvenile justice systems, to ensure strict separation of children from adults and to fully enforce the prohibition of corporal punishment.

40. He drew attention to his visits to Kazakhstan and Uruguay, after which he had made recommendations that had been followed up by the Governments concerned. The reports on those missions would be the subject of a dialogue at the next session of the Human Rights Council, to be held in Geneva in March 2010. He was planning to visit Zimbabwe from 28 October to 4 November and Jamaica from 13 to 21 February 2010.

41. It was regrettable that some countries, after formally inviting him, had postponed his visits. The Russian Federation, which had invited him to visit in October 2006, had never confirmed any dates. The recent murders of human rights defenders actively combating torture in Chechnya and other North Caucasus republics were of particular concern. The Government of Cuba had invited him in February 2009 to conduct a mission during the current year. Since Cuba had never proposed or agreed on any dates, the visit could not be made in 2009. He hoped that Cuba would set dates as soon as possible so that the mission could take place in the first half of 2010. Dates for his mission to Iraq were still under consideration. In the context of the study on secret detention, he had visited the United Kingdom and Germany and would soon hold meetings with United States officials.

42. **Ms. Schlyter** (Sweden), speaking on behalf of the European Union, said it was regrettable that a significant number of the Special Rapporteur's communications to States had remained unanswered, which revealed a casual attitude with regard to torture. She asked him what specific ways he would like his cooperation with the Committee against Torture and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to develop, and how he would expect to minimize unnecessary duplication. Were there any general, norm-setting actions that the international community should undertake with regard to child detainees and their conditions of detention? She asked how his plan to issue a global report on torture was progressing.

43. **Mr. Ebner** (Austria) said that States should respond to the requests for invitations from special procedures mandate-holders or, even better, issue standing invitations. He asked how appropriate follow-up could be ensured in the United Nations system to better address issues relating to conditions of detention. He wondered whether the special procedures mandate-holders and existing mechanisms could adequately address matters relating to conditions of detention. In its latest resolution (resolution 10/2) on human rights in the administration of justice, the Human Rights Council invited all stakeholders to devote greater attention to the issue of women and girls in prison, with a view to eliminating their gender-specific problems. He asked the Special Rapporteur to briefly elaborate on those problems and provide information on his experience on the topic.

44. **Ms. Zhang** Dan (China) said that the allegations made in paragraph 44 of the Special Rapporteur's report did not correspond to reality. She regretted that unverified and false information had been included in the report. Re-education through labour was a rectifying measure for those who had committed minor offences not covered by the Criminal Code. It was an early intervention mechanism that was governed by strict provisions and procedures. The detention centres mentioned in the report provided training to promote the reintegration and rehabilitation of detainees. The allegation that detainees were kept for years without any judicial proceedings and were subjected to brainwashing was groundless. China's prison law contained clear stipulations on conditions of detention. Each cell had its own bathroom and the detainees' right to privacy was thus protected. Her delegation hoped that the Special Rapporteur would act in accordance with the Code of Conduct for Special Procedures

Mandate-holders and carry out his work fairly, objectively and non-selectively.

45. **Mr. Vigny** (Switzerland) said that the situation of child detainees was deplorable. Noting the regional and international standards established with a view to protecting the rights of detainees, he asked what measures could be taken to ensure that States fulfilled their stated intention to reform their prison systems, so that detainees no longer had to endure adverse conditions.

46. His delegation agreed with the conclusions of the Working Group on Arbitrary Detention concerning the widespread lack of due process rights among detainees. To fill that gap, priority must be given to coordinating the work of the existing special procedures and mechanisms. He asked the Special Rapporteur to provide more information on the possibility of drafting an international convention on the rights of detainees.

47. **Ms. Halabi** (Syrian Arab Republic) said that, under the Convention against Torture, a State must protect persons in any territory under its jurisdiction from torture and other cruel, inhuman or degrading punishment or treatment. She asked why the Special Rapporteur had not cited that provision in the conclusions and recommendations contained in his report.

48. **Mr. Banos** (United States of America) said it was particularly regrettable that the victims of torture were often "ordinary people", as the Special Rapporteur had noted in paragraph 40 of his report. He asked how the international donor community could prioritize the assistance it provided to the poorest States so as to ensure that it effectively contributed to the reform of their judicial and penitentiary systems. In reference to the Special Rapporteur's statement in the report that the violation of international human rights standards seemed to be caused less by resource constraints than by the punitive approach of most criminal justice systems, he asked if the correlation between the resource constraints and prison conditions was weak or robust. He also wondered whether the punitive approach was fundamentally incompatible with human rights.

49. **Ms. Pi** (Uruguay) said that the Special Rapporteur's visit to her country had been very useful, especially since it had raised awareness about the often ignored issue of the rights of detainees, which was not one of the priorities of a population burdened by economic and social pressures. Her Government had quickly taken steps to follow up on the Special Rapporteur's recommendations.

50. **Ms. Stefan** (Liechtenstein) said she welcomed the report's focus on the situation of child detainees and fully supported the Special Rapporteur's recommendation that no child should be detained unless as a last resort. Given that country visits were a prerequisite to the effective implementation of the Special Rapporteur's mandate, she asked for more information on outstanding visits.

51. **Mr. Hetanang** (Botswana) said that his delegation did not agree at all with the Special Rapporteur's conclusions and recommendations on the prohibition of corporal punishment. Nor did his delegation agree that domestic legislation providing for corporal punishment could not be considered compatible with the Convention against Torture. The Special Rapporteur had failed to acknowledge that corporal punishment fell under the area of criminal justice methods that lay within the domestic jurisdiction of sovereign States, in line with the Charter of the United Nations. He reaffirmed his delegation's willingness to cooperate with all special procedures mandate-holders, including the Special Rapporteur, but believed that special rapporteurs would serve humanity better if they were not overindulgent in implementing their mandates but rather followed the letter and spirit of their Code of Conduct.

52. **Ms. Luther-Ogbomode** (Nigeria) expressed concern at the allegations contained in paragraphs 44 and 77 of the Special Rapporteur's report. She regretted that he had not contacted the Nigerian Government before inserting such allegations in the report and asked him to bring them to the Government's attention in future. In the context of the universal periodic review held in Geneva in March 2009, Nigeria had given unrestricted access to all relevant non-governmental and human rights organizations. None of them had brought any such allegations, and no special rapporteur had communicated information on the subject to the Nigerian Government. Such "ambush diplomacy" did not augur well for the elimination of torture and was therefore not helpful to anyone. Her Government considered the rule of law to be one of its cardinal principles and did not in any way encourage torture, even in places of detention. It had therefore embarked on prison reforms in collaboration with relevant

interested partners. There were no "torture rooms" in Nigeria. As a party to the Convention against Torture and the Convention on the Rights of the Child, Nigeria was aware that it still had shortcomings, but it stood ready to cooperate in efforts to eliminate them.

53. **Ms. Meymand** (New Zealand) asked the Special Rapporteur how he was ensuring follow-up of the recommendations he had made after his country visits.

54. **Mr. Christofolo** (Brazil) expressed concern at the situation of orphans and noted that the Human Rights Council, at its eleventh session, had adopted United Nations guidelines for the alternative care of children without parental care, submitted at the initiative of Brazil and other countries of the region. The instrument was very important for States in that it enabled them to bring their legislation into line with their obligations under international human rights law.

55. **Ms. Polo** (Togo) reaffirmed her Government's willingness to combat all forms of torture. It had therefore adopted a Children's Code, which strictly prohibited corporal punishment, it was also bringing Togo's domestic legislation into conformity with international human rights standards and had set up a hotline in January 2009 for reporting acts of violence either witnessed or experienced.

56. **Mr. El-Shakshuki** (Libyan Arab Jamahiriya) noted that the part of the Special Rapporteur's report dealing with children in detention (chap. IV) said nothing about the imprisonment of children in countries involved in armed conflict or under foreign domination.

57. **Ms. Pérez Alvarez** (Cuba) asked for more information on paragraphs 11, 12, 32 and 35 of the Special Rapporteur's report, which concerned the Guantanamo Bay detention centre.

58. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), replying to the representative of Egypt, said that cooperation with the Committee on the Rights of the Child was crucial in interpreting the provisions of the Convention on the Rights of the Child and other instruments dealing with children. He would soon be attending a meeting of the Committee on the Rights of the Child to consider, among other things, the very difficult issue of determining at what age children could be brought into detention with their mothers and for how long; the reply to that question should take into account, above all, the child's best interest.

59. In response to the representative of Sweden, speaking on behalf of the European Union, he said there was no risk of duplication because all the mechanisms were complementary. There was good cooperation not only with United Nations bodies but with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

60. As for the feasibility of a global report on torture, he explained that he was currently trying to draw general conclusions that he would include in his next report to the Human Rights Council. He promised to be more systematic than he had been in the past and to submit his report to the Council in March 2010.

61. On the question raised by the representatives of Austria and Switzerland concerning norm-setting for the general conditions of detention, he said that although the main focus of his mandate had been to examine cases of torture and formulate recommendations on how to eradicate torture, it was also part of his mandate to assess the general conditions of detention. He had spent much time visiting centres of detention or internment and had found the situation in some institutions to be much worse than he had expected. Hence there was a need to establish further standard-setting that would be more specific than the Standard Minimum Rules for the Treatment of Prisoners. The international community should define the basic rights of detainees more precisely, including respect for privacy, the right to a minimum amount of space and the number of authorized family visits, and it would be good to embody those definitions in a binding treaty.

62. In reply to the representative of Austria, he explained that Governments were not under any obligation to invite him to their country. Clearly, unless States took the initiative, he could do nothing. As for gender-specific problems in detention, he noted that he had duly taken into account, during his missions, the situation of women and violence against them. Together with the Special Rapporteur on violence against women, its causes and consequences, he had examined the situation of women in the Republic of Moldova, focusing on trafficking. In Togo and Nigeria, he had also studied the issue of female genital mutilation. In specific reference to women detainees,

what was most important was that women should be separated from men in prisons, which was the case in nearly all the countries he had visited. Such separation was more rigid than that observed between juveniles and adults. In most of the countries he had visited, whether in respect of the quality of relations between detainees and guards, the judiciary system, cleanliness or overcrowding, women were generally better off than men, which did not mean, however, that they were safe from violence, including sexual harassment.

63. The issues raised by the representatives of China and Nigeria had been dealt with in his report; however, the situations referred to in the report had been observed by him directly during his missions, at the invitation of the respective Governments. In reply to the representative of China, he said that the Chinese Government had undertaken to look into the matters that arose during the mission, including the forms of "re-education through labour"; such a study was particularly relevant in that China was preparing to ratify the International Covenant on Civil and Political Rights, a development which he welcomed. Addressing the issue raised by the representative of Nigeria, he said that he had not overstepped the boundaries of his mandate. During his visit, he had always operated with the full knowledge of the Government, which had assured him that it would make every effort to close the "torture rooms" and take action against the persons responsible, and in later meetings had told him that the necessary actions had been taken.

64. In reply to the United States representative, he said that although there was an undeniable link between poverty and deplorable conditions of detention, such conditions were often also attributable to a lack of political will. His missions to the countries were primarily aimed at increasing cooperation with Governments, it being understood that he was always willing to approach the donor community to request assistance to countries in their efforts towards penitential and judicial reforms. Uruguay was a very good example of such cooperation, in that the Government had been extremely open during his visit. The situation in some Uruguayan prisons had been much worse than he had expected, and so he had made recommendations to the Government; three days after his departure, the Government had ordered the closing of some penitentiaries. He therefore urged the international donor community to cooperate with Governments.

65. With regard to the question asked by the representative of Liechtenstein, he confirmed that he would visit Zimbabwe the following week and Jamaica in February 2010. A mission to Cuba had been planned for November 2009, but the Cuban Government had not been able to complete the preparations in time and had assured him that the visit would take place in the first half of 2010; the dates remained to be set. The Russian Federation was strongly encouraged to make a specific proposal for 2010.

66. He strongly disagreed with the remarks of the representative of Botswana, and recalled that corporal punishment was absolutely prohibited under international law. Therefore, there should be no corporal punishment any more, in particular against children.

67. In reply to the representative of New Zealand, he said that, unfortunately, follow-up was the weak link in his mandate. Thus, the Republic of Moldova had asked for training with a view to creating a national mechanism for the prevention of torture, and Sri Lanka had asked for a police training programme, but more resources would be needed in order to achieve success in those endeavours.

68. With regard to the comments from the representatives of the Libyan Arab Jamahiriya and the Syrian Arab Republic, he noted that his report did not focus on armed conflict, but it did generally insist that the absolute prohibition of torture should be respected. In Sri Lanka, a country in armed conflict which he did visit, he saw child soldiers among the Liberation Tigers of Tamil Eelam who had been detained by Government forces. He had called on countries in conflict to authorize him to conduct a mission there, but he could in no case visit a State without an invitation from the Government.

69. In connection with the conditions of detention in the Guantánamo Bay centre referred to by the representative of Cuba, he said that he would be going to Washington, D. C., the next day at the invitation of the United States Department of State in order to stress the need to close those facilities as quickly as possible. He welcomed President Obama's executive order to close down the centre within a year, a task that was especially difficult in that the issue would first have to be settled as to where to transfer the detainees without violating the principle of non-refoulement. The United States would need to find third countries willing to

accept the detainees. He was encouraged that some European Union countries had agreed to accept the Guantánamo detainees and hoped that other States would follow that example. President Obama should be supported in his efforts to close down the centre by January 2010 or as soon as possible.

70. He explained to the representative of the Syrian Arab Republic that the situation in question was a difficult one, legally speaking, but that the Convention against Torture and other international treaties outlawing torture clearly created State obligations, which applied not only to persons living in the State's own territory but also to persons living in territories that it occupied, since they were under its effective control.

The meeting rose at 1.05 p.m.